

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Senate Bill 493 be amended to read as follows:

- 1 Page 2, between lines 5 and 6, begin a new paragraph and insert:
- 2 "SECTION 2. IC 33-23-1-9.5 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2009]: **Sec. 9.5. "NICS" has the meaning set**
- 5 **forth in IC 35-47-2.5-2.5.**
- 6 SECTION 3. IC 33-23-15 IS ADDED TO THE INDIANA CODE
- 7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2009]:
- 9 **Chapter 15. NICS Appeals**
- 10 **Sec. 1. This chapter applies to the following:**
- 11 (1) A person civilly committed under IC 12-26-6-8.
- 12 (2) A person found to be mentally ill and either dangerous or
- 13 gravely disabled under IC 12-26-7-5.
- 14 (3) A person found guilty but mentally ill under IC 35-36-2-5.
- 15 (4) A person found not responsible by reason of insanity
- 16 under IC 35-36-2-4.
- 17 (5) A person found incompetent to stand trial under
- 18 IC 35-36-3-1.
- 19 (6) A person found to be a drug abuser or an alcoholic under
- 20 IC 12-23-8.
- 21 (7) A person receiving treatment or rehabilitation services
- 22 under IC 12-23-14.
- 23 (8) A person receiving treatment or rehabilitation services
- 24 from a drug court under IC 12-23-14.5.
- 25 (9) A confined offender who is determined to be mentally ill
- 26 by a psychiatrist employed or retained by the department of
- 27 correction under IC 11-10-4.
- 28 **Sec. 2. (a) If a person described in section 1 of this chapter:**
- 29 (1) has been released from commitment; or
- 30 (2) successfully completes a treatment or rehabilitation
- 31 program;

the person may petition the court (if the adjudication leading to the person's commitment, rehabilitation, or treatment program was from a court) or the department of correction (if the determination leading to the person's rehabilitation or treatment program was from a psychiatrist employed by or retained by the department of correction) to determine whether the person is prohibited from possessing a handgun because the person is not a proper person under IC 35-47-1-7(5) or IC 35-47-1-7(6).

(b) In determining whether the person is prohibited from possessing a handgun because the person is not a proper person under IC 35-47-1-7(5) or IC 35-47-1-7(6), the court or department of correction shall consider the following evidence:

(1) The facts and circumstances leading to the person being included in the category of persons to whom this chapter applies.

(2) The person's mental health and criminal history records.

(3) Evidence concerning the person's reputation, including the testimony of character witnesses.

(4) A recent mental health evaluation.

(c) If the court or the department of correction, after considering the evidence described in subsection (b), finds by clear and convincing evidence that:

(1) the person is not a danger to the person or to others;

(2) the person is not likely to act in a manner dangerous to public safety; and

(3) the requested relief would not be contrary to public interest;

the court or department of correction shall transmit a copy of its findings to the department of state court administration, and any other information required by the division of state court administration, for transmission to NICS in accordance with IC 33-24-6-3.

(d) A determination under this section may be appealed only in accordance with section 3 of this chapter.

Sec. 3. (a) A person who receives an adverse decision under section 2 of this chapter may seek review of the decision by filing, not later than thirty (30) days after receiving the adverse decision, an action for review:

(1) in the court of conviction, if the adverse decision was made by the department of correction; or

(2) in a circuit or superior court in a county adjacent to the county in which the court rendered the adverse decision, if the adverse decision was made by a court.

(b) The court hearing an action for review filed under this section shall conduct the review hearing de novo. The hearing shall be conducted in accordance with section 2 of this chapter.

(c) The determination of a court under this section is a final appealable order."

Page 2, line 33, after "evidence" insert "**demonstrating by clear and convincing evidence**".

Page 3, line 10, after "offense." insert "**If a person's license is suspended because the person has been charged with a felony, the person may seek reinstatement of the license in accordance with subsection (k).**".

Page 3, line 12, delete "judicial review in accordance" and insert "**de novo review of the suspension or revocation in accordance with subsection (d).**".

Page 3, delete lines 13 through 14.

Page 3, line 15, delete "suspension or revocation is valid."

Page 3, line 16, delete "judicial" and insert "**de novo**".

Page 3, line 17, after "(d)" insert "**A person who receives an adverse decision under subsection (a) of this chapter may seek review of the decision by filing, not later than thirty (30) days after receiving the adverse decision, an action for de novo review in the court of conviction. The sentencing court hearing an action for review filed under this section shall conduct the review hearing de novo. If the court finds that the superintendent has demonstrated by clear and convincing evidence that there is documented evidence showing that the person is prohibited under section 3(g)(5) of this chapter from being issued a license or is not a proper person to be licensed under:**

(1) IC 35-47-1-7(1) (conviction for resisting law enforcement);

(2) IC 35-47-1-7(2) (conviction for a felony);

(3) IC 35-47-1-7(3) (conviction for a crime of domestic violence);

(4) IC 35-47-1-7(4) (prohibited by court order);

(5) IC 35-47-1-7(5) (alcohol or drug abuser);

(6) IC 35-47-1-7(7) (false statement of material fact on handgun application);

(7) IC 35-47-1-7(8) (conviction related to unsafe use of a handgun);

(8) IC 35-47-1-7(9) (conviction related to violation of this article); or

(9) IC 35-47-1-7(10) (certain juvenile adjudications);

**the court shall affirm the superintendent's suspension or revocation of the person's license. If the superintendent fails to meet the burden of proof, the court shall order the superintendent to reinstate the person's license. The determination of a court under this subsection is a final appealable order.**

**(e).**

Page 3, line 19, delete "a circuit or" and insert "**the sentencing**".

Page 3, line 20, delete "superior".

Page 3, line 20, delete "in the person's county of residence".

Page 3, line 26, delete "(e)" and insert "**(f)**".

Page 3, line 26, delete "(d)" and insert "**(e)**".

- 1 Page 3, line 27, delete "a preponderance of the" and insert "**clear**
- 2 **and convincing**".
- 3 Page 4, line 2, delete "(f)" and insert "(g)".
- 4 Page 4, line 2, delete "(d)" and insert "(e)".
- 5 Page 4, line 22, delete "(g)" and insert "(h)".
- 6 Page 4, line 22, delete "(d)" and insert "(e)".
- 7 Page 4, line 26, delete "(h)" and insert "(i)".
- 8 Page 4, line 32, delete "(i)" and insert "(j)".
- 9 Page 4, between lines 34 and 35, begin a new paragraph and insert:
- 10 "**(k) This subsection applies only to a person whose license has**
- 11 **been suspended because the person has been charged with a felony.**
- 12 **If the person is acquitted of:**
- 13 **(1) all felonies; and**
- 14 **(2) all misdemeanors that would disqualify the person from**
- 15 **possessing a license;**
- 16 **the person may petition the court in which the trial was held to**
- 17 **order the superintendent to reinstate the person's license. The**
- 18 **court shall schedule a hearing and notify the prosecuting attorney.**
- 19 **In a hearing conducted under this subsection, the prosecuting**
- 20 **attorney must prove by clear and convincing evidence that the**
- 21 **person is not entitled to possess a license. The court shall order the**
- 22 **superintendent to reinstate the person's license unless the court**
- 23 **finds that the prosecuting attorney has proved by clear and**
- 24 **convincing evidence that the person is not entitled to possess a**
- 25 **license."**
- 26 Page 4, line 37, after "(a)" insert "**This section does not apply to a**
- 27 **person described in IC 33-23-15.**
- 28 **(b)".**
- 29 Page 4, line 37, after "may" insert "**conditionally**".
- 30 Page 4, line 40, delete "gives rise to a reasonable" and insert
- 31 "**demonstrates by clear and convincing evidence**".
- 32 Page 4, line 41, delete "belief".
- 33 Page 5, line 1, delete "reasonable grounds to believe" and insert
- 34 "**clear and convincing evidence**".
- 35 Page 5, line 3, after "section." insert "**The superintendent may**
- 36 **suspend the license of a person charged with a felony in accordance**
- 37 **with subsection (s)."**
- 38 Page 5, line 5, delete ":" and insert "**written medical evidence**".
- 39 Page 5, delete lines 6 through 9.
- 40 Page 5, line 10, delete "(c) Upon" and insert "**(d) This subsection**
- 41 **does not apply to a person who has been charged with a felony. A**
- 42 **person whose license has been suspended under subsection (b) may**
- 43 **seek reinstatement of the license by filing a request for**
- 44 **reinstatement with a circuit or superior court in the person's**
- 45 **county of residence not later than thirty (30) days after the**
- 46 **person's license has been suspended. The person must attach a**
- 47 **signed waiver of medical privacy concerning all matters that bear**

on the person's eligibility to possess a license. The court shall forward a copy of the request for reinstatement and waiver of medical privacy to the county prosecuting attorney. If the person has filed a request for reinstatement and waiver of medical privacy with the court, upon".

Page 5, line 11, delete "(a)" and insert "(b)".

Page 5, line 23, after "the" insert "person's".

Page 5, line 23, after "county" insert "of residence".

Page 5, line 33, after "(2)." insert **"If a person does not file a request for reinstatement and waiver of medical privacy, the person's license will be suspended indefinitely. However, a person whose license has been indefinitely suspended based on the person's failure to seek reinstatement under this subsection may, not earlier than three hundred sixty-five (365) days after the person's license was suspended, file a petition for reinstatement with the court in accordance with subsection (m)."**.

Page 5, line 34, delete "(d)" and insert "(e)".

Page 5, line 41, delete "(e)" and insert "(f)".

Page 5, line 41, delete "(d)" and insert "(e)".

Page 6, line 6, delete "(f)" and insert "(g)".

Page 6, line 7, delete "(d)" and insert "(e)".

Page 6, line 14, delete "(g)" and insert "(h)".

Page 6, line 14, delete "(f)" and insert "(g)".

Page 6, line 18, delete "(h)" and insert "(i)".

Page 6, line 24, delete "(i)" and insert "(j)".

Page 6, line 24, delete "(h)" and insert "(i)".

Page 6, line 32, delete "(j)" and insert "(k)".

Page 6, line 33, after "proved" insert **"by clear and convincing evidence"**.

Page 7, line 1, delete "(k)" and insert "(l)".

Page 7, line 1, delete "(j)" and insert "(k)".

Page 7, line 4, delete ":" and insert **"written medical evidence."**.

Page 7, delete lines 5 through 7.

Page 7, line 8, delete "(l)" and insert "(m)".

Page 7, line 8, after "after" insert ":"

**(1)".**

Page 7, line 9, delete "(j)" and insert "(k)".

Page 7, line 9, delete "," and insert **"; or**

**(2) the person's license is suspended, if the person does not file a petition for reinstatement under subsection (d);".**

Page 7, line 9, beginning with "the person" begin a new line blocked left.

Page 7, line 10, after "license." insert **"The person must attach to the petition a signed waiver of medical privacy concerning all matters that bear on the person's eligibility to possess a license."**.

Page 7, line 11, after "petition" insert **"and waiver of medical privacy"**.

- 1 Page 7, line 15, delete "(m)" and insert "(n)".
- 2 Page 7, line 15, delete "(l)" and insert "(m)".
- 3 Page 7, line 16, delete "a preponderance of the" and insert "**clear**
- 4 **and convincing**".
- 5 Page 7, line 21, delete "(n)" and insert "(o)".
- 6 Page 7, line 21, delete "(l)" and insert "(m)".
- 7 Page 7, line 29, delete "(o)" and insert "(p)".
- 8 Page 7, line 29, delete "(l)" and insert "(m)".
- 9 Page 7, line 31, delete "(l)" and insert "(m)".
- 10 Page 7, line 32, delete "(l)" and insert "(m)".
- 11 Page 7, line 33, delete "(p)" and insert "(q)".
- 12 Page 7, line 39, delete "(q)" and insert "(r)".
- 13 Page 7, between lines 41 and 42, begin a new paragraph and insert:
- 14 **"(s) This subsection applies only to a person who has been**
- 15 **charged with a felony. The superintendent may suspend the license**
- 16 **of a person charged with a felony until the criminal case against**
- 17 **the person is resolved. If the person is acquitted of:**
- 18 **(1) all felonies; and**
- 19 **(2) all misdemeanors that would disqualify the person from**
- 20 **possessing a license;**
- 21 **the person may petition the court in which the trial was held to**
- 22 **order the superintendent to reinstate the person's license. The**
- 23 **court shall schedule a hearing and notify the prosecuting attorney.**
- 24 **In a hearing conducted under this subsection, the prosecuting**
- 25 **attorney must prove by clear and convincing evidence that the**
- 26 **person is not entitled to possess a license. The court shall order the**
- 27 **superintendent to reinstate the person's license unless the court**
- 28 **finds that the prosecuting attorney has proved by clear and**
- 29 **convincing evidence that the person is not entitled to possess a**
- 30 **license."**
- 31 Renumber all SECTIONS consecutively.  
(Reference is to SB 493 as printed February 13, 2009.)

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Senator WALTZ